HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL Nos.951 and 952 of 2006

W.A.No.951 of 2006

Between:
Purnendu Kumar Sharma

…Appellant

AND

Government of A.P., rep., by its Director,
Department of Sainik Welfare,
Secretariat, Hyderabad & other.

… Respondents

Counsel for the appellant : Shri B. Sree Rama Krishna

Counsel for respondent No.1: Government Pleader for Medical, Health and Family Welfare
Counsel for respondent No.2: Government Pleader for Home
Counsel for respondent No.3: Shri D.V.Nagarjuna Babu

W.A.No.952 of 2006

Between:
Ms. Akanksha Singh

… Appellant

AND

Government of A.P., rep., by its Principal Secretary,
Health, Medical & Family Welfare Department,
Secretariat, Hyderabad & others.

… Respondents

Counsel for the appellant : Shri K.G.K. Prasad

Counsel for respondent No.1: Government Pleader for Medical, Health & Family Welfare
Counsel for respondent No.2: Shri D.V.Nagarjuna Babu

Counsel for respondent No.3: Government Pleader for Home

Dated: 9th November, 2006

: COMMON ORDER :

Per C.V.NAGARJUNA REDDY. J.

As the issues arising in both the writ appeals are identical, the two writ appeals are being disposed of together.

The two writ appeals i.e., W.A.Nos.951 and 952 of 2006 arise out of the order of the learned Single Judge in W.P.Nos.16305 and 17905 of 2006 respectively whereby he declined to grant reliefs sought for in these writ petitions.

W.A.No.951 of 2006:-

The appellant in his affidavit filed in support of his W.P.No.17950 of 2006 pleaded that his father served Indian Air Force for 26 years and was discharged from Air Force service with effect from 01.09.1999 when he was working at Hakimpet, Secunderabad. When his father was working in Air Force Station, Hakimpet, he got admitted into class IX in Kendriya Vidyalaya, Air Force Station, Hakimpet on 20.04.1998 and he has studied in the said school from class IX to class XII i.e., for four academic years up to 10.06.2002. The appellant claimed that class XII in CBSC, which he had studied is equivalent to two years intermediate examination conducted by the Board of Intermediate Education, A.P. The appellant appeared for Engineering and Medical Common Entrance Test (for short "EAMCET") 2003 for admission into MBBS/BDS courses conducted by the 3rd respondent – University and as he failed to secure the rank required for admission under the

children of armed forces (CAP) quota, he appeared once again for EAMCET 2004 with Hall Ticket No.4605428 and secured rank No.11372. The appellant was considered under CAP quota and in the counselling held on 29.09.2004 he was offered admission in first year BDS course. As the appellant intended to pursue MBBS course, he did not join BDS and again appeared for EAMCET 2005. He had secured merit rank No.7447. At the time of counselling held for the academic year 2005-06 the appellant submitted all the required documents as were submitted during the academic year 2004-05. However, the 3rd respondent in the counselling held on 29.07.2005 refused to consider the admission of the appellant under CAP quota on the ground that he does not belong to local area. The appellant has therefore filed W.P.No.17503 of 2005 questioning the said action of the 3rd respondent. The said writ petition was dismissed on 07.10.2005, on the ground that the appellant's father having got registered outside the State of A.P. at the time of his discharge, the appellant is not entitled to be considered under CAP quota in the State of A.P. After the dismissal of W.P.No.17503 of 2005, the appellant's father approached the authorities concerned seeking necessary amendment in the discharge book. The 2nd respondent issued the necessary amendment in the discharge book and registered the appellant's fathers name in the local Sainik Welfare Board. A identity card was also issued by the 2nd respondent. The appellant again appeared for EAMCET examination 2006 with Hall Ticket No.3527319 and secured merit rank No.7708. When the 2nd respondent was approached for a CAP certificate certifying the appellant's eligibility for being considered under CAP quota by the 3rd respondent, the 2nd respondent has declined to issue such a certificate. Hence, the appellant filed

W.P.No.17950 of 2006 questioning the Memo No.850/2006/Admn, dated 20.07.2006 issued by the 2nd respondent, refusing to issue a CAP certificate and for a consequential direction to respondents to consider the appellant's candidature for admission into first year MBBS/BDS course for the academic year 2006-07 under the CAP quota in the second phase of counselling scheduled to be held in the third week of August 2006.

W.A.No.952 of 2006:-

The appellant Ms. Akanksha Singh, D/o. Sri Janardhan Singh filed this appeal. In the affidavit filed in support of her writ petition i.e., W.P.No.16305 of 2006, the appellant claimed that she studied V and VI classes during the academic years 1998-99 and 1999-2000 in St.Ann's School, Visakhapatnam. Later, she studied classes VII to X from St. Joseph Girls High School, Visakhapatnam during the academic years 2000-2001 to 2003-2004. The appellant studied her two years intermediate course in Sri Chaitanya Cooperative Junior College, Visakhapatnam during the academic years 200-2006. According to the appellant, she satisfied the description of local candidate of Andhra University Local Area as per the provisions of the Presidential order, 1974. The appellant appeared for EAMCET 2006-2007 conducted by the Convener, EAMCET in the month of April, 2006 and obtained rank of 2094. In pursuance of the notification dated 12.06.2006 issued by the University inviting applications from among eligible candidates, who have qualified in EAMCET 2006, she submitted her application for admission into first year MBBS/BDS course. As per the provisions of the Presidential Order, 85% of the available seats shall be reserved in favour of the local candidates and the remaining 15% seats shall be for unreserved candidates. As per

the schedule announced for counselling by the 2nd respondent – University, 24.07.2006 was fixed for counselling for the CAP category candidates.

The appellant further contended in her affidavit that para 7.4 of the prospectus relates to reservation for the children of service men and ex-service men and para 7.5 *inter alia* provides that the claims of candidates under CAP quota will be referred to Director, Sainik Welfare Department, A.P. The appellant further claims that the 3rd respondent – Sainik Welfare Board issued a certificate on 01.03.2006 in favour of the appellant certifying that she is eligible for admission under CAP category-IV. The said certificate was issued based on the certificate issued by the Mandal Revenue Officer pertaining to her residence and the service rendered by the appellant's father at Visakhapatnam. On 24.07.2006, the 2nd respondent – University rejected the claim of the appellant for being considered under CAP quota on the ground that the appellant's father is a "non-local ex-service man, not a native of A.P., resident of U.P. till 25.05.2006. Hence, not eligible for admission. Further, the father of the appellant has changed his address only on 25.05.2006 vide BOS/GB/107644 dated 13.05.2006."

This action of the 2nd respondent was assailed in the writ petition.

Separate counter-affidavits were filed in W.P.No.16305 of 2006 by respondents 2 and 3.

After hearing the counsel for the parties in the writ petitions and considering the material filed by the parties, the learned Single Judge

by his order, dated 08.09.2006, dismissed both the writ petitions.

The learned Single Judge held that mere proof of residence for a minimum period of five years in the State of A.P. alone is not the criterion for considering the candidates under CAP quota. The learned Judge held that there is a distinction between the quota for locals as ordained in the Presidential Order issued by the President of India under Article 371 of the Constitution of India and 1% reservation provided for children of ex-service men and serving service personnel of three wings of the defence services under the rules framed by the Government of A.P. in exercise of powers under G.O.Ms.Nos.183 and 184 dated 30.06.2004 under Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983, and as notified in G.O.Ms.Nos.183 and 184, dated 30.06.2004. While holding that the appellants under Presidential Order 1974 are entitled to be considered against 85% quota reserved for locals, the learned Judge, however, held that they are not entitled to be considered under the CAP quota merely on the basis of residence for a minimum period of five years in the State of Andhra Pradesh. The learned Judge held that the requirement of proof of residence for a minimum period of five years is to be read along with entries in the discharge certificate of the Army personnel which indicate the domicile of the Army/Ex-Army personnel. In short the learned Single Judge held that the residence for a minimum of five years along with the domicile in a particular State in which the benefit under CAP quota is claimed are the essential requirements for being considered against the 1% quota reserved for CAP.

The learned counsel appearing for the appellants contended that under para 7.4 of the prospectus issued by the 2nd respondent, the

only requirement for the candidates being considered under CAP quota is that proof of residence of the ex-service man who served in any of the three wings of the defence services viz., Army, Navy and Air Force for a minimum period of five years in A.P. Both the appellants, submit the learned counsel appearing for them, satisfy this requirement.

The learned counsel appearing for the appellant in W.A.No.951 of 2006 submitted that after the dismissal of W.P.No.17503 of 2005 on the ground that the appellant's father's name was not registered with local Sainik Welfare Board, his father approached the concerned authorities and that accordingly the 2nd respondent has issued an identity card with the local address. The learned counsel contended that the proceedings of the 3rd respondent impugned in the writ petition whereunder the appellant's request for issuance of a certificate in his favour for getting admission into the MBBS/BDS course under CAP quota is arbitrary as the same is in violation of para 7.4 of the prospectus issued by the 2nd respondent. According to the learned counsel, the appellant having satisfied the only requirement of the residence for a minimum period of five years in the State of A.P. is entitled to be considered under the CAP quota and that the learned Single Judge committed an error in declining the relief sought for in the writ petition.

The learned counsel for the appellant in W.A.No.952 of 2006 has submitted that the appellant's father Janardhan Singh was issued an identity card bearing No.A.P. 22 009832 on 27.04.2000, which was valid for a period of three years, successively on two later occasions, and the last of the renewals is valid up to 27.04.2009. Learned

counsel further submitted that the appellant's father registered his name with District Employment Exchange at Visakhapatnam on 27.04.2000 and on the strength of these two documents, apart from the residence certificate issued by the Mandal Revenue Officer, Visakhapatnam (U) on 01.03.2006 certifying that the appellant is a resident of Visakhapatnam since 1991 to 1996 and 1998 till the date of issuance of the certificate, the appellant satisfied the requirement of para 7.4 of the prospectus issued by the 2nd respondent and that therefore, the learned Judge committed an error in rejecting the relief sought for in the writ petition.

The contentions of the learned counsel for the appellants though appear attractive at the first blush, in our opinion, do not merit acceptance. In the counter-affidavit filed by Sri J.Purnachandra Rao, Director, Sainik Welfare, Andhra Pradesh, in W.P.No.16305 of 2006 it is stated that to avail the benefits by the ex-service men in their respective States, they must register with the Zilla Sainik Board serving their area of residence. A copy of the manual of procedure issued by the Director General Resettlement, New Delhi containing relevant clauses providing for procedure for registration of ex-service men was filed as an enclosure to the said counter-affidavit.

Of the material filed by the third respondent, proceedings No.4008/DGR/S&R/RES-9, dated 22.1.1992 of the Directorate General, Resettlement, Ministry of Defence, Government of India, New Delhi, is most relevant. The said proceedings were issued to the Zilla Sainik Boards who approached the Directorate seeking clarifications on the procedure for issue of fresh identity cards to ex-servicemen consequent upon change in their state of domicile. Para-1 (b) of the said proceedings which is relevant in this context is extracted below:

> " 1(b) The basic purpose of issue of identity card has been to confer the status of ex-serviceman to the holder of the card and to facilitate his identity which entitles him to various benefits and concessions. The issue of identity card by a particular ZSB does not mean that the card holder belongs to that State/ZSB for purpose of availing any benefit/concessions. For availing of various benefits/concessions offered by a State, ex-servicemen has to be the domicile of that State. With a view only to avoid inconvenience to all those ex-servicemen, who may have been away from the RSB/ZSB of that State or domicile on account of re-employment etc; the ex-servicemen were permitted to have their identity cards issued by RSB/ZSB in whose jurisdiction they may be residing at the time of issue of identity card." (emphasis supplied)

The aforementioned circular reveals, beyond any pale of doubt that Ex-servicemen can avail the benefits/concessions offered by a State only if he is the domicillary of that State. No doubt the guidelines issued in the prospectus of the second respondent – University refer only to the requirement of the residence of Ex-servicemen for a minimum period of five years in the State concerned. Para 7.4.1(a) of the prospectus of the 2nd respondent – University provides that application of the candidates under CAP quota shall be scrutinized by the Andhra Pradesh Sainik Board or its nominee and their decision is final and binding on the candidates. In our opinion para 7.4 cannot be read in isolation ignoring the relevant instructions/proceedings issued by the concerned authority, i.e., the Directorate General of Resettlement, Ministry of Defence, Government of India. The conditions contained in the prospectus, are required to be read in conjunction with the instructions issued by the Directorate General of Re-settlement, Ministry of Defence, Government of India. Otherwise,

the very object of providing the benefits/concessions to Ex-servicemen in the States in which they are the permanent residents would be likely to be defeated. If benefits are given to Ex-servicemen merely on the strength of this residence, there is a possibility of temporary residents, who reside in the States other than their native States only on account of their employment, cornering benefits to the detriment of the Ex-servicemen who are domicillaries of those States. It is stated in the counter affidavit filed on behalf of the third respondent in W.P.No.16305 of 2006 that during the 26th meeting of Kendriya Sainik Board, Ministry of Defence, New Delhi held on 28.6.2006 attended by all the representatives of State Rajya Sainik Boards, a proposal was mooted to remove the domicile restrictions of the defence personnel for the purpose of giving benefits from the States otherthan their own States and no final consensus on the same could be arrived at. We are in entire agreement with the finding of the learned Single Judge that mere residence, *dehors* the proof of domicile, does not entitle the children of Ex-servicemen to the benefits under CAP category.

In the light of the aforementioned findings, when we examine the facts, the father of the appellant in W.A.No.951 of 2006 got himself registered outside Andhra Pradesh giving Muzaffarpur, Bihar as his permanent address. The appellant studied at Hakimpet, Secunderabad from the academic year 1998 to 2002. The appellant appeared for EAMCET - 2005 seeking admission into first year MBBS course in the academic year 2005-2006. As the appellant's case was not considered in CAP quota, he filed W.P.No.17503 of 2005, which was dismissed by the learned Single Judge of this Court on 07.10.2005 (reported in 2005(6) ALD 434). The learned Single Judge of this Court after considering the case of the petitioner and a similarly

situated person, dismissed the writ petitions with the following findings:

> " 15. It is a matter of record that the Ex-servicemen in both these cases are registered in the Sainik Welfare Office in Muzaffarpur of Bihar State and Thanjavur of Tamil Nadu State, respectively"

> " 18. If it were to be a case where registration at any place in India, would enable an Ex-servicemen to claim benefit in the rest of the country, the necessity for transfer or proving nativity, domicile etc., would not have arisen. The first sentence in the 1st paragraph of the circular dated 13.1.1994 issued by the Directorate General of Resettlement makes it clear, beyond any pale of doubt, that it is only the persons, who are registered with the respective State or District Sainik Boards, that are entitled to the benefits, providing within that region. When such are the clear instructions and directions, the question of extension of the benefit of reservation in favour of CAP category to the children of Ex-servicemen, registered at a place outside the State; does not arise. Learned Counsel for the parties are not able to place any material, to convince this Court, to ignore the circulars, orders and clarifications, issued by the authorities of the Defence Ministry, which are referred to, or extracted above."

The appellant has not questioned the said judgment. After dismissal of the said writ petition, the appellant's father approached the concerned authorities and got amendment in the discharge book getting himself registered with local Sainik Welfare Board, following which a fresh Identity card was given to him. When the appellant approached the third respondent to give eligibility certificate for consideration under CAP quota, the impugned proceedings are issued. No doubt, in the impugned proceedings it was mentioned that prior to the change of the permanent address of the petitioner's father

in the discharge certificate on 19.1.2006, he was a resident of Bihar and that therefore, the appellant is not entitled for reservation of seat under CAP category. We find that this reasoning of the third respondent is factually incorrect. Merely because, the appellant's father had given Muzaffarpur in Bihar as his permanent address in the discharge book, he cannot be treated as a non-resident of Andhra Pradesh till the address in the discharge book are changed. However, on a reading of the entire letter, it can be reasonably presumed that what the third respondent really meant was that since the appellant's father has registered himself at ZSB, Muzaffarpur on 19.11.1999 with the permanent address at Muzaffarpur given therein and the said permanent address having been changed only on 19.1.2006, the appellant is not entitled to be considered under CAP quota. This intention of the third respondent can be further culled out from his referring to the earlier judgment of this Court dated 07.10.2005, in the writ petition filed by the appellant, as referred to above. The purport of the said letter is that unless one is domiciled in a State and resided for a minimum period of five years, he cannot get the benefits available in that State under CAP quota merely by virtue of his residing in that State. On the analysis of all the aspects of the case, we are of the considered view that the proceedings dated 20.7.2006 impugned in the writ petition issued by the third respondent do not suffer from any illegality and the learned Single Judge was justified in dismissing the writ petition.

As regards the appellant in W.A.No.952 of 2006, no doubt, she appears to have studied in Vishakapatnam from 1988 to 2006 and from the certificate of residence issued by the Mandal Revenue Officer, Vishakapatnam, it is evident that she had been residing in

Vishakapatnam for more than five years till the date of issue of certificate, i.e., on 1.3.2006. But the appellant's father, who retired from the Indian Navy was given a discharge certificate in which his permanent address was shown as "Vill & Post – Nagahar, via Rasra, Distt- Ballia (UP) 221712". The household supply card dated 14.10.1999 issued by the Department of Civil Supplies, Government of Andhra Pradesh, the Passport bearing No.A7297492, dated 25.2.1999 and the registration of appellant's father with District Employment Exchange on 27.4.2000 are the documents which no doubt show that the appellant is staying at Vishakapatnam, Andhra Pradesh along with her parents for morethan five years. As already held above, this fact by itself would not entitle the appellant to the benefits available to Ex-servicemen in the State of Andhra Pradesh without the proof of her domicile in the State of Andhra Pradesh. The learned Single Judge, therefore, rightly declined to grant any relief to the appellant and the said order, in our considered view does not suffer from any error warranting interference by us in exercise of our Letters Patent Jurisdiction.

Before parting with this case, we would like to mention that the ambiguity in the prospectus issued by the second respondent appears to be the reason for filing a number of cases of this nature. Para 7.4 of the prospectus refers to the proof of residence for a minimum period of five years as the only requirement for consideration of candidates under CAP quota. The various proceedings issued by the Directorate General of Resettlement, Ministry of Defence, Government of India, prescribe domicile as the main criterion for claiming benefits by Ex-servicemen. We hope that the second respondent – University will have a fresh look at the conditions of its prospectus and bring them in

line with the requirements stipulated by the Ministry of Defence, for the purpose of filling up of seats under CAP quota in future.

For the aforementioned reasons, the writ appeals fail and they are accordingly dismissed. No order as to costs.

As a sequel to the dismissal of the writ appeals, W.A.M.P.No.1998 of 2006 in W.A.No.951 of 2006 and W.A.M.P.No.1999 of 2006 in W.A.No.952 of 2006 stand dismissed.

C.V.NAGARJUNA REDDY, J

Dated: 9th November, 2006.

G.S.SINGHVI, CJ

Es/Mdaa